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No. 10-139

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

GRAZYNA H. CHRISTMAN,
Petitioner

v

UTICA NATIONAL INSURANCE GROUP, INC.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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GROUNDS FOR PETITION FOR REHEARING

This Court grants the petitions for rehearing only in exceptional circumstances. Petitioner respectfully submits that the ramifications of the Court's decision, which may not have been fully briefed at the merits stage, cry out for a second look. First, absent this Court's granting the petition, there is no deterrent for Respondent to abstain from its discriminatory practices against other older female employees. Respondent is not some small, locally operated business, but a large, nationwide corporation. The Utica National Insurance Group, Inc. has its corporate headquarters in New Hartford, NY and numerous regional offices all over the United States: 1) Eastern Regional Office & Specialized Products Division, and Errors & Omissions, both located in Utica, NY; 2) New York Metropolitan Regional Office in Jericho, NY; 3) Middle Atlantic Regional Office in Richmond, VA; 4) Republic-Franklin Insurance Company in Columbus, OH; 5) New England Regional Office in Wakefield, MA; 6) Southeastern Regional Office in Atlanta, GA, and 7) Southwestern Regional Office in Richardson, TX. [1] The Utica National employs one thousand three hundred twenty five (1,325) employees across the regional offices. [2] The Utica National has over $2.0 billion in assets, and an "A-" or "Excellent" rating from the A.M. Best Company. In 2009, the Utica National had the direct written premium of $583

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[1] Respondent's website at http://www.uticanational.com/Contact/ContactForm.asp.

[2] *Ibid* at http://www.uticanational.com/CareerOpps/HR_Main.asp.

million, the policyholders' security fund of $766.5 million, and the policyholders' dividends of $11.9 million. [3] Respondent prides itself on being "among the top 100 insurance organizations in the nation" and providing "top-quality coverages and a commitment to service that is unsurpassed [emphasis added] in the insurance industry." [4]

Respondent, however, cannot acknowledge being equally committed to observing the employment laws which prohibit age and gender discrimination, inasmuch as it wrongfully put an end to Petitioner's nearly fifteen years long career, leaving her psychologically and financially scarred for the remainder of her life. [5] Being fired at fifty two is a traumatic experience; being fired for no just reason, while called into the Human Resources and forbidden to go back to your desk to retrieve your purse and coat, takes that trauma to the extreme level. "Getting fired during your peak earning years has always been scary. You'd scramble for a few months, but you'd find something. Today it's different. Get fired and you can scramble for years--and still find nothing. Welcome to the cold new world of the

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[3] *Ibid* at http://www.uticanational.com/company/vitalstatistics.asp.

[4] *Ibid* at http://www.uticanational.com/Company/AboutUN_home.asp.

[5] Petitioner held two jobs simultaneously since 1996: full-time at Utica National and part-time at Fleet Bank, currently Bank of America. After termination in 2005, she assumed a full-time position at the bank, but was unsuccessful finding an accounting job comparable to her previous employment with Respondent.

prematurely, involuntarily retired." [6]

Secondly,. absent this Court's granting the petition, there is no deterrent for Respondent's counsel to abstain from its deceptive and unethical defense practices in the future legal proceedings. In the F.R.C.P. Rule 11 Motion for Sanctions against Defendant's Attorney for Conduct Violating Rule 11(b), Petitioner explained:

> In this civil action brought against Utica National Insurance Group, Inc., Defendant pursued Motion for Summary Judgment even though it was aware of disputed material facts and stated in its Memorandum of Law, that "there is no genuine issue as to any material fact requiring a [trial] and Defendant is entitled to judgment as a matter of law." Defendant ignored the supporting evidence and documents that were already in record and asserted that Plaintiff had no evidence. Plaintiff's evidence was comprised of documents previously submitted by both parties to NYS Division of Human Rights, Depositions Transcripts and Defendant's e-mails, all too familiar to Defendant. *See* Dkt. No. 46, pp. 6-7, 07/31/08.

For that matter, "[t]he nonmoving party may defeat a motion for summary judgment that asserts that the

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[6] From "50 and Fired" article by John Helyar printed in May 16, 2005 Fortune magazine; also available at http://money.cnn.com/magazines/fortune/fortune_archive/2005/05/16/8260148/index.htm.

nonmoving party has no evidence by calling the court's attention to supporting evidence already in the record that was overlooked or ignored by the moving party." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 332 (1986).

During the deposition in November 2007, Respondent's counsel and Stefan D. Berg, Esq., Petitioner's former lawyer "[s]tipulated that all documents submitted to the Division of Human Rights by either party are admissible." *See* Case 6:06-cv-1392-GTS-GHL, U.S. District Court NYND, Document 40-2 (Plaintiff's Rule 7.1 Response filed 05/28/08, Deposition Transcript Christman, Exhibit 13, p. 8:3-5; Plaintiff's Additional Statement of Material Facts, p. 64, ¶ 96). In 2007, Respondent's counsel admitted that "[t]here is a large volume of paperwork [documentation] in connection with this case," but it narrowed (sic) the documents only "to the period of time from the date of [Petitioner's] written warning on January 6, 2005 through her termination date of February 21, 2005 (...) to focus [Respondent's] attention on [Petitioner's] job performance during that period of time in order to justify [falsely] that termination was the appropriate employment decision (as opposed to further warnings, probation, suspension, etc.)." *See* Case 6:06-cv-1392-GTS-GHL, U.S. District Court NYND, Document 49-3 (Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08, Defendant's 11/01/07 Email, Exhibit 112 reproduced in Appendix D-279a-280a). Respondent's counsel chose to disregard all of the record evidence previously submitted to the Division and clearly showing that from 2003 to 2005, the female Petitioner and the similarly situated,

substantially younger male employees were treated by Respondent disparately in terms of discipline and learning opportunities, that gender played a motivating part in Respondent's decision to terminate Petitioner's employment, and that Petitioner's "poor job performance" was merely a pretext to cover up Respondent's discrimination.

CONCLUSION AND PRAYER

For all the foregoing reasons, Petitioner respectfully requests and prays that the Court reconsider its decision, grant this Petition for Rehearing to ensure that not another employee is terminated wrongfully by Respondent, that Respondent's Mission [7] posted on its website is not an empty slogan, but the statement by which Respondent stands, and Petitioner is given a fair chance to be righteously compensated for the immense harm, which Respondent inflicted on her intentionally.

Respectfully submitted,

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[7] The Utica National's Mission statement reads: "We will meet the needs of our employees by providing security and opportunity to those employees willing and able to meet the increasing demands of the evolving financial services marketplace." Respondent's website at http://www.uticanational.com/company/mission.

CERTIFICATE OF GOOD FAITH

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UTICA NATIONAL INSURANCE GROUP, INC.,
Respondent

Pursuant to Rule 44 of the Rules of the Supreme Court of the United States, I hereby certify that the Petition for Rehearing is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed on October 13, 2010

/s/
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HOPE WILLIAMS
Notary Public, State of New York
Reg. #01WI6224610
Qualified in Oneida County
My Commission Expires July 06, 2014
/s/